

# SENATE BILL REPORT

## SB 5449

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As Reported By Senate Committee On:  
Government Operations & Elections, February 22, 2007

**Title:** An act relating to authorizing voluntary environmental management and incentive zone plans for subareas.

**Brief Description:** Authorizing voluntary environmental management and incentive zone plans for subareas.

**Sponsors:** Senators Swecker, Rockefeller, Jacobsen, Kastama, Clements, Pflug, Haugen, Benton and Rasmussen.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/08/07, 2/22/07 [DPS-WM].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5449 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Benton, Pridemore and Swecker.

**Staff:** Mac Nicholson (786-7445)

**Background:** In addition to other requirements under the Growth Management Act (GMA), counties and cities must adopt development regulations that protect critical areas. Critical areas include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Each county and city must include the "best available science" in developing policies and development regulations to protect the functions and values of critical areas.

**Summary of Bill:** Cities and counties are authorized to adopt proposed environmental and incentive zone subarea plans as an alternate means of meeting the requirements to protect the functions and values of critical areas under GMA.

An environmental and incentive zone subarea plan (plan) must, to the maximum extent practicable, promote and include voluntary, nonregulatory solutions. Development policies, rules, and conditions may also be included in a plan as necessary to provide adequate protection of critical area functions and values. Regulatory action in a plan may not prohibit uses legally existing on any parcel prior to plan adoption.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A plan is developed by a planning partnership consisting of cities, counties, property owners, stakeholders, and a lead management entity. A lead management entity is planning entity appointed by a city or county to coordinate and facilitate the use of nonregulatory incentives. Cities, counties, public organizations, and private nongovernmental organizations with authority to receive public funds may serve as a lead management entity.

Cities and counties choosing to initiate planning under this legislation must create a scoping document to identify the geographic boundaries of the proposed planning subarea and the requirements and responsibilities the planning process is designed to meet.

Cities and counties may adopt proposed plans, provide exceptions or individual waivers to critical area requirements, and integrate voluntary and nonregulatory incentives, and regulatory programs to meet other GMA, state, and federal requirements.

One million dollars is appropriated for the legislation, to be distributed by the Department of Community Trade and Economic Development (CTED), which is required to select and fund at least ten pilot planning efforts.

Government jurisdictions are authorized to partner with other government and private entities, and are encouraged to broadly interpret their ability to collaborate as part of the planning process.

Cities and counties are given broad deference and discretion under the bill to prioritize and balance the goals of GMA and critical area requirements. Growth management hearings boards and reviewing courts must not find an adopted plan to be out of compliance with this chapter if the adopted plan as a whole satisfies the requirements of the bill.

A joint legislative oversight committee is created, composed of one member from each caucus from each chamber of the Legislature. The committee must appoint a nonvoting advisory counsel composed of a broad and balanced range of stakeholders. The committee must review progress of planning efforts under the legislation and report to the Legislature by 2009.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Government Operations & Elections):** The number of pilot planning programs authorized under the bill is reduced from ten to five, and the appropriation is reduced from \$1,000,000 to \$500,000. The substitute clarifies that cities and counties may provide exceptions or individual waivers to critical area requirements within a subarea, and be given broad deference and discretion, if the plan as a whole includes best available science for the subarea under consideration and provides at least the equivalent protection of critical area function and value.

Conservation districts are added as organizations authorized to be a lead management entity and participate in the planning partnership.

In ranking the applications for funding a plan under the legislation, CTED can give preference to applications with the greatest potential to use proven monitoring and adaptive management methods to measure the effectiveness of incentives and programs adopted under the planning process. Development policies, rules, and conditions included in the plan may not prohibit uses legally existing on any parcel prior to plan adoption except for those uses restricted or limited through voluntary agreements by landowners included in the plan as permanent or long

term commitments. Plans adopted under the legislation must promote voluntary, nonregulatory solutions as a planning priority, rather than the first priority, where they would be effective in substantially meeting the goals and requirements of the GMA.

**Appropriation:** \$1,000,000.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The bill creates 10 pilot programs to explore new alternatives for sub areas to work on a collaborative basis using new approaches to manage the landscape. The goal is to provide better environmental outcomes and better voluntary incentives for landowners. The bill creates options for landowners to preserve the working landscape while optimizing value of lands. The bill creates the opportunity for all affected stakeholders to take a holistic look at the landscape and discuss alternatives that protect functions while creating incentives and opportunities for landowners. The nonregulatory voluntary program established in the bill is a good step to protect the environment and protect property rights.

CON: There is a concern about voluntary measures preempting the regulatory safety net. The regulatory net needs to be there for when voluntary measures don't make the protection work.

OTHER: The intent behind the bill is good. A main concern that should be addressed by the bill is to see that zones are set up to address protection of critical areas across the area zones. There should be no net loss of protection of critical areas. Combining regulatory and incentive tools across a watershed or sub area if done well has the potential to yield better results than a parcel by parcel approach to habitat protection. The bill needs to avoid unintended consequences. Incentive zones must work with other parts of GMA. The bill lacks assurances that the incentive zone approach achieves an equivalent level of protection as the best available science standards. There should be a strong regulatory backdrop and monitoring components to evaluate how the incentive programs are working.

**Persons Testifying:** PRO: Senator Swecker, prime sponsor; Andrew Cook, Building Industry Association of Washington; Todd Christensen, Centralia-Chehalis Chamber of Commerce.

CON: Kaleen Cottingham, Futurewise.

OTHER: Leonard Bauer, Department of Community Trade and Economic Development; Jennifer Hayes, Washington Department of Fish and Wildlife.